

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

Albany Division

KUN FUK CHENG (a/k/a STEVEN CHENG)

Movant & Defendant

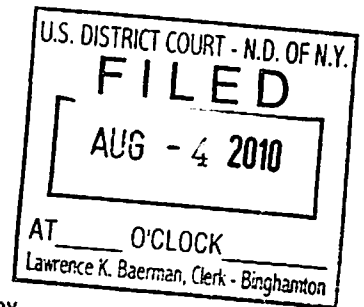
v.

UNITED STATES OF AMERICA

Respondent & Plaintiff

The Honorable Thomas J. McAvoy

Case No.: 04-CR-544 (TJM)



SECOND MOTION FOR RETURN OF SEIZED PROPERTY  
UNDER FED. R. CRIM. P. 41(g)

NOW COMES movant, Kun Fuk Cheng, pro se and moves this Honorable Court ORDER THE GOVERNMENT to return seized property under Fed. R. Crim. P. 41(g) and governing authorities and, in support, states:

SUMMARY

This motion is being re-filed because the government conceding property was in its possession, had no objection to it being returned and promised this Court it would do so and has not returned the property as promised. Worse yet, Mr. Cheng or his family have repeatedly contacted the Assistant US Attorney (AUSA) and he refuses to answer them.

1. Mr. Cheng plead guilty in November 2005, was sentenced in 2006 and interned at the minimum-security Federal Correctional Institution at Morgantown, West Virginia.
2. On March 22, 2010, Mr. Cheng filed a motion under Rule 41(g) because four years after the government seized records, computers, jewelry and personal property, they had made no effort to return it notwithstanding 60 years of governing authorities requiring it.
3. On April 23, 2010, AUSA Thomas Capezza filed the government's response. He conceded jewelry was in its possession and even cited it was working to identify if said jewelry should be returned to Mr. Cheng or his ex-wife (See Govt. Response, p. 1, ¶ 2). The government did "not oppose defendant's request," (Ibid., p. 2, ¶ 1).
4. On April 29, 2010, Senior US District Judge Thomas J. McAvoy dismissed the motion without prejudice to refiling "in the event the matter is not resolved within ninety days of this order," (See Decision & Order, Apr. 29, 2010).
5. On June 6, 2010, Ms. Cheng wrote AUSA Capezza acknowledging receipt of the property; however, noting that eight (8) pieces of jewelry were missing, which she described (a copy of said letter is attached as Exhibit 1 and included by reference here). Ms. Cheng then followed-up by calling AUSA Capezza several times. He refuses to answer.

6. Ninety days have now passed and the government has not returned the missing jewelry, nor will they communicate with Mr. or Ms. Cheng to resolve the matter informally.
7. The missing jewelry consists of:
  - (A) One Omega-brand ladies watch with a diamond bezel;
  - (B) one gold necklace;
  - (C) one white-gold necklace with designs related to young children;
  - (D) two diamond rings; and,
  - (E) several jade and pearl bracelets.
8. AUSA Capezza told Brian W. Devane, Esq., Mr. Cheng's attorney, several years ago that he understood the government had 'lost' the jewelry; however, the jewelry Mr. Cheng believes was listed on the inventory of seized property the government is required to make and maintain. AUSA Capezza also conceded determining who was to receive the jewelry specifically was underway in late April 2010, implying it was in the government's possession, custody and control at that time.
9. Mr. Cheng has enclosed here a Request for the Production of Documents asking the government to produce a copy of its seizure inventory in this case and a Memorandum of Law citing the governing authorities requiring the government's action.

WHEREFORE movant prays this Honorable Court ORDER the government to produce its inventory of seized property, return the jewelry it seized and has not returned and such other relief as the Court deems fair and just.

WRITTEN & REQUESTED BY:

DATE:

*Kun Cheng*  
Kun Fuk Cheng  
# 12970-052 / Alex  
FCI Morgantown  
Box 1000  
Morgantown, WV 26507-1000

CERTIFICATE OF SERVICE

I, Kun Fuk 'Steven' Cheng, hereby certify that a true and complete copy of the foregoing Second Motion for Return of Seized Property was sent via USPS first-class, postage pre-paid to AUSA Thomas Capezza, US Attorney's Office, Northern District of New York, 445 Broadway, Room 218, Albany, New York 12207-2924 on or before the 29th day of July 2010.

BY:

DATE:

*Kun Cheng*  
Kun Fuk Cheng  
# 12970-052 / Alex  
FCI Morgantown  
Box 1000  
Morgantown, WV 26507-1000

EXHIBIT 1

June 6, 2010

Thomas A. Capezza  
Assistant U.S. Attorney  
434 Broadway - Room 218  
Albany, New York 12207-2924

RE: Kun Fuk "Steven" Cheng v. United States of America  
Criminal No. : 04-CR-544

Dear Mr. Capezza,

My mother, Jin Rong Cheng, ex-wife of Steven Cheng, requires your help in recovering the return of her personal property as outlined in your attached letter to her on May 18, 2010.

When arrangements were made to pick up her personal items, there was several jewelries and watches that were taken away that was missing. What she remember were one Omega brand diamond-set bezel watch, a gold necklace, a white-gold necklace with little kids design, two diamond rings and several jade/pearl bracelets.

Can you please recheck the inventory of seized items to determine the present whereabouts of her items, and advice my mother.

Your help is as always greatly appreciated. Thank You.

Sincerely,

Celia Cheng

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

Albany Division

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	)	
Movant & Defendant	)	
	)	
v.	)	Case No.: 04-CR-544 (TJM)
	)	
UNITED STATES OF AMERICA	)	
	)	
Respondent & Plaintiff	)	

MEMORANDUM OF LAW  
IN SUPPORT OF SECOND MOTION FOR RETURN OF SEIZED PROPERTY  
UNDER FED. R. CRIM. P. 41(g)

NOW COMES movant, Kun Fuk Cheng, pro se and submits this memorandum of law in support of his second motion for return of seized property under Fed. R. Crim. P. 41(g).

It has been hornbook law for at least 60 years that defendants are entitled to return of their property as a matter of course upon disposition of an indictment or information in lieu of an indictment (See US v. Wallace & Tiernan, Co. 336 US 793, 800 S.Ct. 824, 93 L Ed 1042 (1949); In Re Brenner, 6 F.2d 425, 426-427 (2nd Cir. 1925); and, US v. Wilson, 540 F.2d 1110, 1103 (DC Cir. 1976)). Further, governing authorities have held district courts are not even to consider the government's position regarding such motions (See McSurely v. Rattlift, 398 F.2d 817, 818 (6th Cir. 1968)).

WRITTEN & SUBMITTED BY:

DATE:

*Kun Cheng*

Kun Fuk Cheng  
# 12970-052 / Alex  
FCI Morgantown  
Box 1000  
Morgantown, WV 26507-1000

CERTIFICATE OF SERVICE

I, Kun Fuk 'Steven' Cheng, hereby certify that a true and complete copy of the foregoing Memorandum of Law in Support of Second Motion for Return of Seized Property was sent via first-class, postage pre-paid US Postal Service to AUSA Thomas Capezza, US Attorney's Office, Northern District of New York, 445 Broadway, Room 218, Albany, New York 12207-2924 on or before the 29th day of July 2010.

BY:

DATE:

*Kun Cheng*

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Movant & Defendant

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UNITED STATES OF AMERICA

Respondent & Plaintiff

The Honorable Thomas J. McAvoy

Case No.: 04-CR-544 (TJM)

REQUEST FOR PRODUCTION OF DOCUMENTS

NOW COMES movant, Kun Fuk Cheng, pro se and requests the government produce a document in the above-referenced case relating to a Second Motion for Return of Seized Property Under Fed. R. Crim. P. 41(g) and states:

1. Please produce a copy of any and all inventories from Immigration & Customs Enforcement (ICE), the Federal Bureau of Investigations (FBI), the Internal Revenue Service (IRS) or any other government agency of property seized in the above-referenced case.
2. Please produce any and all records related to the disposition of seized property in this case.
3. Movant notes any and all responses to this request for production of documents must comply with the Federal Rules of Criminal Procedure.

WRITTEN & REQUESTED BY:

DATE:

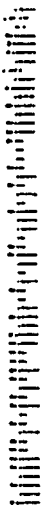
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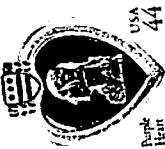
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Box 1000  
Morgantown, WV - 26507  
United States

12970-052

Honorable Thomas Mcavoy  
US Court N.d.n.y.  
445 Broadway Rm. 509  
Albany, NY - 12207 - 2924  
United States



U.S. DISTRICT COURT  
N.D. OF N.Y.  
RECEIVED

AUG 19 1976

LAWRENCE K. SAERMANN, CLERK  
ALBANY